

STATE OF MICHIGAN
COURT OF APPEALS

LANSING SCHOOLS EDUCATION
ASSOCIATION, MEA/NEA, CATHY
STACHWICK, PENNY FILONCZUK,
ELIZABETH NAMIE, and ELLEN WHEELER,

FOR PUBLICATION
August 9, 2011

Plaintiffs-Appellants,

v

LANSING SCHOOL DISTRICT BOARD OF
EDUCATION and LANSING SCHOOL
DISTRICT,

No. 279895
Ingham Circuit Court
LC No. 07-000483-AW

Defendants-Appellees.

Advance Sheets Version

ON REMAND

Before: SAAD, P.J., and FITZGERALD and BECKERING, JJ.

BECKERING, J. (*concurring*).

I concur in the result only.

This case is before us for the second time, on remand from our Supreme Court. In their complaint, plaintiffs alleged that defendants had failed to comply with their mandatory duty under MCL 380.1311a(1) to expel students who physically assaulted teachers. Plaintiffs sought a declaratory judgment, a writ of mandamus, and injunctive relief. In *Lansing Schs Ed Ass'n, MEA/NEA v Lansing Bd of Ed*, 282 Mich App 165; 772 NW2d 784 (2009), rev'd 487 Mich 349 (2010), we affirmed the trial court's award of summary disposition to defendants. We held that plaintiffs had failed to establish the elements for standing under *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 740-741; 629 NW2d 900 (2001), overruled by *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). *Lansing Schs Ed Ass'n*, 282 Mich App at 173-174. It was, therefore, unnecessary to address the remaining issues raised by plaintiffs on appeal. *Id.* at 175-176.

Our Supreme Court reversed this Court's decision. The majority expressly overruled the standing test adopted in *Lee* and its progeny, articulating the "proper standing doctrine" as follows:

We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan’s longstanding historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Schs Ed Ass’n*, 487 Mich at 372.]

The majority held that plaintiffs have standing to pursue their claims for a writ of mandamus and other injunctive relief because they “have a substantial interest in the enforcement of MCL 380.1311a(1) that is detrimentally affected in a manner distinct from that of the general public if the statute is not enforced.” *Id.* at 378. It remanded this Court “to determine whether plaintiffs meet the requirements of MCR 2.605” and “for consideration of the issues that [the Court of Appeals] did not previously reach.” *Id.*

Plaintiffs sought a declaratory judgment under MCR 2.605, which permits a court, “[i]n a case of actual controversy,” to “declare the rights and other legal relations of an interested party seeking a declaratory judgment” MCR 2.605(A)(1). Previously, the standing doctrine articulated in *Lee* and its progeny applied to plaintiffs seeking declaratory relief. *Associated Builders & Contractors v Dep’t of Consumer & Indus Servs Dir*, 472 Mich 117, 126-127 & n 16; 693 NW2d 374 (2005), overruled in part by *Lansing Schools Ed Ass’n*, 487 Mich 349. In this case, the Supreme Court majority overruled *Associated Builders & Contractors* “to the extent that it required a litigant to establish the *Lee/Cleveland Cliffs*¹ standing requirements in order to bring an action under MCR 2.605.” *Lansing Schs Ed Ass’n, MEA/NEA*, 487 Mich at 371 n 18. The majority further held, however, that the “pre-*Lee/Cleveland Cliffs* standard, which was also incorporated into *Associated Builders & Contractors*, remains: “The essential requirement of the term “actual controversy” under the rule is that plaintiffs “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.”” *Id.* at 372 n 20, quoting *Associated Builders & Contractors*, 472 Mich at 126, quoting *Shavers v Attorney General*, 402 Mich 554, 589; 267 NW2d 72 (1978).

In determining whether plaintiffs met the “actual controversy” requirement of MCR 2.605, this Court’s majority cites *Skiera v Nat’l Indemnity Co*, 165 Mich App 184, 189; 418 NW2d 424 (1987), to note that several important purposes are served by “the ability of litigants to obtain declaratory relief” The majority concludes that “an actual controversy is lacking in this case” because “[d]eclaratory relief would serve none of the purposes” listed therein.

¹ *Nat’l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d 800 (2004), overruled by *Lansing Sch Ed Ass’n*, 487 Mich at 378.

While it is not improper to consider whether granting plaintiffs declaratory judgment would serve any of the purposes listed in *Skiera*, I would not limit my analysis to that inquiry alone. Given our Supreme Court’s holding in this case, determining “whether plaintiffs meet the requirements of MCR 2.605” requires a careful examination of the “pre-*Lee/Cleveland Cliffs* standard” as it applied to claims for declaratory judgment and, more specifically, whether plaintiffs met “[t]he essential requirement of the term ‘actual controversy,’” i.e., that they pleaded and proved “facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing Schools Ed Ass’n*, 487 Mich at 372 n 20 (citations and quotation marks omitted).

Furthermore, I would not rest a conclusion that plaintiffs did not meet the requirements of MCR 2.605 solely on the fact that some of the interested parties, i.e., the students, were not before the trial court, as such a defect can generally be cured by amending the pleadings and joining the necessary parties.

That said, I agree with this Court’s majority that the trial court properly granted defendants summary disposition under MCR 2.116(C)(8) for failure to state a claim and that plaintiffs are not entitled to a writ of mandamus or other injunctive relief. As noted by the majority, MCL 380.1311a(1) grants school boards discretion to determine whether a student has committed a physical assault on a school employee, volunteer, or contractor. In this case, the school board reached the legal conclusion, on the basis of the facts presented, that the students’ conduct did not rise to the level of “physical assault” as defined by MCL 380.1311a(12)(b). Given this conclusion, the school board had no duty under MCL 380.1311a(1) to expel the students as requested by plaintiffs, and no further factual development could provide a basis for recovery. While I sincerely sympathize with plaintiffs’ position, they have not identified any mechanism—statutory or otherwise—by which the courts of this state may review the legal conclusion reached by the school board that no physical assaults took place. Absent such a mechanism, we must not invade the discretionary power the school board has pursuant to MCL 380.1311a(1).

/s/ Jane M. Beckering